

Application of Town of West Yellowstone  
Water Reservation No. 70115-41F

II. FINDINGS OF FACT

A. FINDINGS ON THE QUALIFICATION OF THE TOWN OF WEST YELLOWSTONE TO RESERVE WATER (Mont. Code Ann. § 85-2-316(1)(1991); ARM 36.16.107B(1)(a).)

1. The Town of West Yellowstone is an incorporated municipality and a subdivision of the State of Montana. (Bd. Exh. No.5-A, p. 2; Mont. Code Ann. § 85-2-316(1), ARM 36.16.107B(1)(a).)

2. The Town of West Yellowstone has applied for a water reservation of 2,550 acre-feet/year (af/yr) of water with a maximum diversion rate of 3.52 cubic feet/second (cfs) to be diverted from Whiskey Springs for year round use for an unmetered municipal water system. (Bd. Exh. 5-A, p. 2.) The Town of West Yellowstone further states that it would need 1,922 acre-feet/year with a maximum diversion rate of 2.65 cfs to be diverted from Whiskey Springs for year round use for a metered municipal water system. (Bd. Exh. 5-A, p. 13.)

3. The Town of West Yellowstone requested a water reservation to meet future demands by municipal users. (Bd. Exh. 5-A, p. 2.)

B. FINDINGS ON THE PURPOSE OF THE WATER RESERVATION APPLIED FOR BY THE TOWN OF WEST YELLOWSTONE (Mont. Code Ann. § 85-2-316(4)(a)(1991); ARM 36.16.107B(1)(b).)

4. The Town of West Yellowstone seeks to provide municipal water for existing use and future growth in a cost-effective manner. Sound planning requires providing users with an adequate water supply. The term of the water reservation is to year 2025. (Bd. Exh. 5-A, p. 2.)

5. The purpose of the reservation is to provide the water for municipal uses. (Bd. Exh. 5-A, p. 2.) Municipal uses are beneficial uses of water in Montana. (Mont. Code Ann. § 85-2-102(2)(a), ARM 36.16.102(3); ARM 36.16.107B(1)(b).)

C. FINDINGS ON THE NEED FOR THE WATER RESERVATION APPLIED FOR THE TOWN OF WEST YELLOWSTONE (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

6. Whiskey Springs presently provides up to 1,936 acre-feet/year (at a flow rate up to 2.67 cfs) of high quality water to the Town of West Yellowstone. (Bd. Exh. 5-C, p. 6, and West Yellowstone Exh. 2.) The reservation water requested would be

delivered to the present municipal distribution system through an existing 4.3 mile pipeline. (Bd. Exh. 5-C, p. 6.)

7. The Town desires to improve the priority date for its water source. The reservation would run concurrently with any existing water permits. A reservation is the only means to obtain an earlier priority date for water that is presently needed and will be needed to meet projected municipal use (Bd. Exh. 5-A, p. 7.) In the future, water may be appropriated by competing agricultural, industrial, and instream users. (Bd. Exh. 40, p. 249; Bd. Exh. 5-A, pp. 6-9.)

8. It is important that the Town of West Yellowstone have a water reservation to meet present and future municipal water demands for the community. (Bd. Exh. 5-A, p. 19.)

9. Competing water uses may prevent the Town of West Yellowstone from obtaining or perfecting a water use permit in the future. Without a reservation, the Town of West Yellowstone may have to go through a costly process of buying or condemning existing water rights to meet increasing demands. (Bd. Exh. 40, p. 249.)

D. FINDINGS ON THE AMOUNT OF WATER NEEDED FOR THE WATER RESERVATION APPLIED FOR BY THE TOWN OF WEST YELLOWSTONE (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

10. The method of determining the amount of water requested for a water reservation by the Town of West Yellowstone was based on a forecast of its future population and future tourism to the year 2025 along with the estimated amount of water used per person. (Bd. Exh. 5-A, p. 11.) The methodology used by the Town of West Yellowstone projected an average annualized (compounded population growth rate) of approximately 2.0 percent for residents and 1.4 percent for tourists. (Bd. Exh. 5-A, p. 11.) The 1990 population of Town of West Yellowstone was 913. (Bd. Exh. 40, p. 236.) The Town of West Yellowstone's population forecast for the year 2025 was 2,246 people. (Bd. Exh. 40, p. 236.)

11. The resident populations recorded in the 1990 census indicate that the Town of West Yellowstone has grown at 1 percent average annualized rate between 1970 and 1990 (from 756 to 913 people). (Bd. Exh. 5-C, pp. 4 and 7.) A more accurate population projection to the year 2025 would be 1,300 residents based on a 1.0 percent annualized rate. (Bd. Exh. 5-C, p. 4.) Up to 400 additional residents could be added through tourism attractions such as the Grizzly Park development. (Bd. Exh. 5-C, p. 7.)

12. Information from the 1991 summer season indicates that tourism through the West Yellowstone entrance to Yellowstone

National Park has increased at a nearly 3 percent annual rate. (Bd. Exh. 5-C, p. 7.) This is a greater growth rate than the 1.4 percent annualized growth projected by the Town of West Yellowstone. (Bd. Exh. 5-C, p. 7.)

13. The Town of West Yellowstone has recently completed its municipal water system. (West Yellowstone Exh. 1, p. 1.) Because the town water system is newly completed, it is expected to be highly efficient. (West Yellowstone Exh. 12, p. 7.)

14. One hundred percent of the Town of West Yellowstone's water service is metered at present. (West Yellowstone Exh. 12, p. 7.) Approximately 15 percent of the towns residents and businesses remain to be connected to the town water system within a short number of years. Those additional services will be metered. (West Yellowstone Exh. 12, p. 4.)

15. The water use efficiencies associated with the municipal uses by the Town of West Yellowstone are reasonable. (ARM 36.16.107B(3)(b).)

16. No other cost-effective measure could be taken within the reservation term to increase the use efficiency by the Town of West Yellowstone and lessen the amount of water required for the purpose of the reservation. (ARM 36.16.107B(3)(b).)

E. FINDINGS THAT THE WATER RESERVATION APPLIED FOR BY THE TOWN OF WEST YELLOWSTONE IS IN THE PUBLIC INTEREST (Mont. Code Ann. § 85-2-316(4)(a)(iv)(1991); ARM 36.16.107B(4).)

17. Benefits of the Town of West Yellowstone's water reservation were calculated on a willingness-to-pay basis. The Town of West Yellowstone used a \$1.50/1,000 gallons value. (Bd. Exh. 5-A, p. 18.) Helena municipal users are currently paying \$2.47/1,000 gallons value which . (Bd. Exh. 40, p. 253.)

18. The additional water provided by the water reservation will cost approximately \$.43/1,000 gallons. (Bd. Exh. 5-C, p. 9.)

19. The direct benefits of the Town of West Yellowstone's water reservation exceed the direct costs. (ARM 36.16.107B(4)(a).)

20. Indirect benefits of the Town of West Yellowstone's reservation may include secondary economic benefits to the community and to the state, and expanding both the property and income tax base from increased population. (Bd. Exh. 5-A, p. 19.)

21. Indirect costs of the reservation may include loss of opportunity for other development and increased administrative costs. While not quantified these costs are minor. (Bd. Exh. 5-A, p. 18.)

22. Except for possible fisheries impacts (which are presently protected by a Forest Service .5 cfs bypass flow requirement), there are no expected significant adverse environmental impact associated with the use of the Town of West Yellowstone's water reservation. (Bd. Exh. 5-C, pp. 8-9.) All significant impacts would be mitigated by the attached Specific Reservation conditions. The effects of individual municipal water reservation depletions on water quality have not been quantified (Bd. Exh. 40, pp. 253-254), but should be very small. Resulting health risks have not been quantified. No other non-quantifiable benefits or costs were identified. (Bd. Exh. 5-A.) No non-quantifiable benefits or costs were identified.

23. Net benefits of granting the Town of West Yellowstone's water reservation exceed the net benefits of not granting the water reservation and the project is economically feasible. (ARM 36.16.107B(4)(b); ARM 36.16.102(9).)

24. The Town of West Yellowstone identified one alternative source of water for future development, the continuing use of wells having elevated fluoride levels (Bd. Exh. 5-A, p. 14.) This alternative would not provide greater net benefits than the water reservation, (West Yellowstone Exh. 12, p. 5) and is not reasonable. (ARM 36.16.107B(4)(c).)

25. Failure to reserve water for future municipal use by the Town of West Yellowstone is likely to result in an irretrievable loss of a resource development opportunity. (Bd. Exh. 5-A, p. 20; ARM 36.16.107B(4)(d).)

26. As conditioned, the Town of West Yellowstone's water reservation will have no significant adverse impact to public health, welfare, or safety. (ARM 36.16.107B(4)(e).)

F. OTHER FINDINGS RELATING TO BOARD DECISION (Mont. Code Ann. § 85-2-316(3)(B), (4)(a)(iv)(b)(5), (6), and (9)(e)(1991); ARM 36.16.107B(5) through (8).)

27. The water reservation by the Town of West Yellowstone will be used wholly within the state and within the Missouri River basin. (Bd. Exh. 5-A; ARM 36.16.107B(5) and (6).)

28. The Town of West Yellowstone has identified a management plan for the design, development, and administration of its water reservation. (Bd. Exh. 5-A, p. 21.)

29. The Town of West Yellowstone is capable of exercising reasonable diligence towards feasibly financing the project and applying reservation water to beneficial use in accordance with the management plan. (ARM 36.16.107B(7).)

30. The priority date of the Town of West Yellowstone's

water reservation is July 1, 1985. (Mont. Code Ann. § 85-2-331(4).)

31. As conditioned, the Town of West Yellowstone's water reservation will not adversely affect any senior water rights. (ARM 36.16.107B(8).)

32. The public interest in protecting domestic and stockwater rights with a priority date on or after July 1, 1985 and perfected prior to the final date of this order outweighs the values protected by the municipal reservations.

### III. CONCLUSIONS OF LAW

1. Town of West Yellowstone is a qualified applicant for a water reservation. (Mont. Code Ann. § 85-2-316(1)(1991).)

2. The purpose of the Town of West Yellowstone's application is a beneficial use. (Mont. Code Ann. § 85-2-316(4)(a)(i)(1991); ARM 36.16.107B(1)(b).)

3. The need for the Town of West Yellowstone has been established. Specifically, the City has established that there is a reasonable likelihood that future in-state competing water uses would consume the water available for the purpose of its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

4. The methodologies and assumptions used by the Town of West Yellowstone are suitable but not accurate under present conditions. (ARM 36.16.107B(3)(a).) A more accurate residential population projection for the year 2025 is 1,700 people. As modified, the Town of West Yellowstone has established the amount of water needed to fulfill its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

5. Based on a weighing and balancing of the evidence, the reservation by the Town of West Yellowstone as modified and conditioned herein is in the public interest. (Mont. Code Ann. § 85-2-316(4)(a)(iv); ARM 36.16.107B(4).)

6. Upper Missouri River water reservations approved by the board shall have a priority date of July 1, 1985. (Mont. Code Ann. § 85-2-331(4).) The Board may determine the relative priorities of all reservations. (Mont. Code Ann. § 85-2-316(a)(e).)

7. The Board may grant, deny, modify or condition any reservation applied for. In no case may the Board make a reservation for more than the amount applied for. (Mont. Code Ann. § 85-2-316.)

8. The Board has no authority under the reservation statutes or any other statutes to determine, or alter any water right that is not a reservation. (Mont. Code Ann. § 85-2-316(14).)

#### IV. ORDER

1. Subject to all applicable modifications, conditions and limitations (including but not limited to the conditions applied to consumptive use reservations in Exhibits A and B attached to this order) the application of the Town of West Yellowstone is granted for the following amount and flow of water: 2.65 cfs and 1,922 af/year.

2. The point of diversion and places of use are as set forth in the reservation application Town of West Yellowstone and by reference are made a part of this Order.

3. The reservation is adopted subject to being perfected by December 31, 2025.

4. Relative to other reservations the priority date of the reservation shall be ahead of any other non-municipal reservation granted with a priority date of July 1, 1985. The reservation shall have equal priority with all other reservations granted to all municipalities.

5. Any and all liability arising from the reservation or the use of the reservation is the sole responsibility of the applicant. By granting such reservations, the Board on behalf of itself and the Department of Natural Resources and Conservation assumes no liability.

#### Specific Reservation Conditions

A. Compliance with existing and future agency permitting requirements; as directed by state or federal permitting agencies.